

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 30 2017

HERNANDEZ ET AL,
PLAINTIFFS,

V.

ABBOTT ET AL,
DEFENDANTS.

§
§
§
§
§
§
§

BY
DEPUTY

CAUSE NO: 9:17cv23

MOTION FOR THE APPOINTMENT OF COUNSEL

PLAINTIFF JASON J. HERNANDEZ, AS THE DESIGNATED LEAD PLAINTIFF, ON REHALF OF HIMSELF, THE NAMED PLAINTIFFS AND CLASS MEMBERS, AND OTHER SIMILARLY SITUATED PRISONERS HOUSED WITHIN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ) ALLAN B. POLUNSKY UNIT's (POLUNSKY) SECURITY HOUSING UNIT (SHU), MOVES FOR THE APPOINTMENT OF COUNSEL TO PURSUE CLAIMS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION. PURSUANT TO 28 U.S.C. § 1915, HE REQUESTS THIS COURT TO APPOINT COUNSEL FOR THE FOLLOWING REASONS:

1. THE CASE HAS MERIT. *Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001) ("...[W]E LOOK FIRST TO THE 'LIKELIHOOD OF MERIT' OF THE UNDERLYING DISPUTE.").

2. PLAINTIFF WILL HAVE DIFFICULTY INVESTIGATING THE FACTS, *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1104 (9th Cir. 2004) (NOTING THAT PLAINTIFF NEVER GOT ACCESS TO RELEVANT REGULATIONS THROUGH DISCOVERY).

3. CONFLICTING EVIDENCE IMPLICATING THE NEED FOR CROSS-EXAMINATION WILL BE IMPORTANT TO THE CASE. *Bright v. Hickman*, 96 F. Supp. 2d 572, 577-78 (E.D. Tex. 2000) (NEED FOR CROSS-EXAMINATION SKILLS TO DEAL WITH CONFLICTING TESTIMONY SUPPORTED APPOINTMENT OF COUNSEL).

4. PLAINTIFF'S INABILITY TO PRESENT THE CASE. *Bright v. Hickman*, 96

F. Supp. 2d 572, 577 (E.D. Tex. 2000)(PLAINTIFF'S LACK OF EDUCATION AND EXPERIENCE WITH THE JUDICIAL SYSTEM SUPPORTED COUNSEL APPOINTMENT).

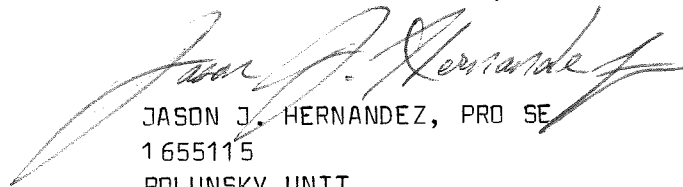
5. THE CASE INVOLVES THE PERSONAL INVOLVEMENT OF MULTIPLE DEFENDANTS. *Hendricks v. Coughlin*, 114 F.3d 390, 394 (2d Cir. 1997)(FINDING FIRST AMENDMENT RETALIATION CLAIM ALLEGING SUPERVISORY LIABILITY TO BE COMPLEX); *Bright v. Hickman*, 96 F. Supp. 2d 572, 577-78 (E.D. Tex. 2000).

6. AS A PRO SE LITIGANT, IT IS QUESTIONABLE WHETHER THE PROPOSED CLASS REPRESENTATIVE WOULD ADEQUATELY REPRESENT THE INTERESTS OF THE OTHER CLASS MEMBER. *McGrew v. Texas Bd. of Pardons & Paroles*, 47 F.3d 158, 162 (5th Cir. 1995); *Graham v. Perez*, 121 F. Supp. 2d 317, 321 (S.D.N.Y. 2000) ("[I]T IS WELL SETTLED IN THIS CIRCUIT THAT PRO SE PLAINTIFFS CANNOT ACT AS CLASS REPRESENTATIVES" BECAUSE THEY DO NOT SATISFY THE REQUIREMENTS OF RULE 23(a)(4)(CITATIONS OMITTED)).

WHEREFORE, THIS HONORABLE COURT SHOULD APPOINT COUNSEL TO REPRESENT THE PLAINTIFF, NAMED PLAINTIFFS AND CLASS MEMBERS--- AND, CERTIFY PLAINTIFFS' APPOINTED COUNSEL TO SERVE AS CLASS COUNSEL.

DATED: MARCH 26, 2017

RESPECTFULLY SUBMITTED,



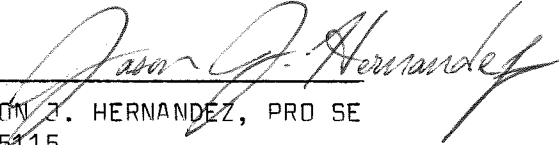
JASON J. HERNANDEZ, PRO SE
1655115
POLUNSKY UNIT
3872 FM 350 SOUTH
LIVINGSTON, TEXAS 77351

CERTIFICATE OF SERVICE

PURSUANT TO 28 U.S.C. § 1746, I CERTIFY UNDER PENALTY OF PERJURY THAT A TRUE AND CORRECT COPY OF THE FOREGOING MOTION FOR THE APPOINTMENT OF COUNSEL WAS

MAILED TO: DAVID A. O'TOOLE, CLERK, U.S. DISTRICT COURT, EASTERN DISTRICT OF TEXAS, LUFKIN, TEXAS 75901; AND TO: KEN PAXTON, ATTORNEY GENERAL OF TEXAS, OFFICE OF THE ATTORNEY GENERAL OF TEXAS, P.O. BOX 12548, AUSTIN, TEXAS 78711-2548, BY REGULAR MAIL, POSTAGE PREPAID, ON MARCH 26, 2017.

SIGNED THIS 26 DAY OF March, 2017.

/s/ 

JASON J. HERNANDEZ, PRO SE
1655115

POLUNSKY UNIT
3872 DM 350 SOUTH
LIVINGSTON, TEXAS 77351

JASON J. HERNANDEZ
1655115
POLUNSKY UNIT
3872 FM 350 SOUTH
LIVINGSTON, TEXAS 77351

NORTH HOUSTON TX

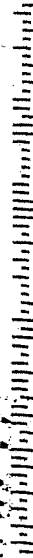
28 MAR 2017 PM 1:14



DAVID A. O'TOOLE, CLERK OF COURT
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
CAUSE NO: 9:17cv23
104 NORTH THIRD STREET
LUFKIN, TEXAS 75901

L E G A L

75901-963135



5